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House Bill 4646 (Substitute H-2 as passed by the House)
Sponsor: Representative Mike Shirkey
House Committee: Families, Children, and Seniors
Senate Committee: Families, Seniors and Human Services

Date Completed: 10-23-13

CONTENT

The bill would amend the Michigan Adoption Code to do the following:

- **Allow a parent or guardian to execute an out-of-court release or consent to relinquish his or her parental rights, if certain requirements were met.**
- **Allow a parent or guardian to execute an out-of-court consent after a child's birth in a direct placement.**
- **Require an adoption attorney or child placing agency caseworker to explain to a parent or guardian executing an out-of-court release or consent the parent's or guardian's legal rights and the fact that he or she would voluntarily relinquish those rights by virtue of the release or consent.**
- **Require a court to issue an order terminating parental rights not sooner than five days, excluding weekends and holidays, after execution of an out-of-court release or consent.**
- **Provide that an out-of-court release or consent would be revocable from the time of execution until not more than five days, excluding weekends and holidays, after execution.**
- **Require an adoption attorney or child placing agency caseworker to assist a parent or guardian in filing a revocation petition.**
- **Authorize the court in which the release or consent was filed to determine that revocation was not in the best interest of the child.**
- **Provide that, with regard to revocation, the parent's or guardian's right to the child would not be superior to the right of the adoptive parent or parents.**
- **Require a hearing before a judge, unless the adoptive parent or parents, or the child placing agency that accepted a release, agreed to the revocation; and prescribe factors the judge would have to consider in determining the best interest of the child.**
- **If an out-of-court release or out-of-court consent had been signed, require a petition to revoke a temporary placement to be filed with the court within five days, excluding weekends and holidays.**

Out-of-Court Release & Consent

Under the Code, a person or guardian may relinquish his or her parental rights over a specific child by executing a release of parental rights or giving consent for adoption of the child. ("Release" means a document in which all parental rights over a specific child are voluntarily relinquished to the Department of Human Services or a child placing agency.

"Consent" means a document in which all parental rights over a specific child are voluntarily relinquished to the court for placement with a specific adoptive parent.)

Except as otherwise provided, a release or consent must be by a separate instrument executed before a judge of the court or a juvenile court referee. The bill would allow a parent or guardian to execute an out-of-court release in front of and witnessed by a third-party witness and an adoption attorney representing the parent or guardian or a third-party witness and a child placing agency caseworker, after a 24-hour waiting period beginning with the child's birth had expired, unless exigent circumstances prohibited or impeded waiting that long. If exigent circumstances existed, the specific circumstances would have to be stated in the release prepared by the attorney who represented the parent or guardian and witnessed the release, or a caseworker from the child placing agency that accepted the release.

In a direct placement, a parent or guardian could execute an out-of-court consent after the child's birth. Requirements similar to those described above would apply. An out-of-court consent could be executed before a petition for adoption was filed. ("Direct placement" means a placement in which a parent or guardian selects an adoptive parent for a child (other than a stepparent or an individual related to the child within the fifth degree) and transfers physical custody to the prospective adoptive parent.)

An out-of-court release executed by an unemancipated minor would not be valid unless it also was signed in the presence of the witness by the minor's parent or guardian.

Currently, as a rule, a release or consent may not be executed until after the investigation the court considers proper and until after the judge, referee, or other individual has fully explained to the parent or guardian his or her legal rights and the fact that he or she voluntarily relinquishes those rights by virtue of the release or consent. Under the bill, if an out-of-court release or consent were executed, the adoption attorney representing the parent or guardian who witnessed it or a caseworker from the child placing agency would have to provide the explanation.

Upon a child's release by a parent or guardian, the court immediately must issue an order terminating the rights of the parent or guardian to that child. Under the bill, if an out-of-court release were executed, the court would have to issue the termination order not sooner than five days, excluding weekends and holidays, after execution. The bill would establish a similar requirement in the case of an out-of-court consent.

Revocation

Currently, upon petition of the person or people who executed a release and of the Department of Human Services (DHS) or child placing agency, the court may grant a hearing to consider whether the release should be revoked. Under the bill, if an out-of-court release had been executed, written notice of revocation would have to be submitted to the adoption attorney representing the parent or guardian or a caseworker from the child placing agency within five days, excluding weekends and holidays, after the release was executed and acknowledged.

An out-of-court release or consent would be revocable from the time of execution until not more than five days, excluding weekends and holidays, after execution. Revocation would have to be in writing to the adoption attorney representing the parent or guardian who witnessed the release or consent or a caseworker from the child placing agency that accepted the release or consent. If the parent executing the revocation were an unemancipated minor, the revocation would not be valid unless it also was signed in the presence of the witness by the minor's parent or guardian. Upon receiving the notice, the adoption attorney or caseworker would have to assist the parent or guardian in filing the

revocation petition. The court in which the release or consent was filed could determine that revocation was not in the best interest of the child.

If a petition to revoke an out-of-court release or consent were filed with the court, timely notice of revocation would not immediately result in the return of the child to the parent or guardian. The parent's or guardian's right to the child would not be superior to the right of the adoptive parent or parents. The bill would require a hearing before a judge, unless the adoptive parent or parents or, in the case of a release, the child placing agency that accepted it, agreed to the revocation. At the hearing, the judge would have to determine whether the notice was given in a timely and proper manner, and whether good cause existed to determine that the release or consent was not executed voluntarily. If the court found that the out-of-court release or consent was not executed voluntarily, the release or consent would be invalid and custody of the child would have to be returned to the parent or guardian. If the court found that the release or consent was executed voluntarily, the court would have to determine whether the child's best interest would be served by any of the following:

- Returning custody to the parent or guardian.
- Continuing the adoption proceeding commenced or intended to be commenced by the adoptive parent or parents.
- Disposition appropriate to the child's welfare as authorized by the juvenile code under an ex parte order entered by the court.

In determining the best interest of the child, the court would have to determine if the parent or guardian seeking revocation was fit and immediately able to properly care for the child if the court returned the child to him or her. If the court determined that the parent or guardian was not fit and immediately able to care for the child, the court would have to deny the revocation. Otherwise, the court would have to determine the best interest of the child.

"Best interest of the child" would mean the sum total of the following factors to be considered, evaluated, and determined by the court:

- The child's age and length of time the parent or guardian seeking revocation had physical custody so that significant love, affection, and other emotional ties existed between the parent or guardian and the child and whether during that time the child lived in a stable, satisfactory environment.
- The capacity and disposition between the prospective adopting individual or individuals and the parent or guardian to give the child love, affection, and guidance, and to educate and create a milieu that fosters the child's religion, racial identity, and culture.
- The capacity and disposition between the prospective adopting individual or individuals and the parent or guardian to provide the child with food, clothing, education, permanence, medical care or other remedial care recognized and permitted under the State law in place of medical care, and other material needs.
- The permanence as a family unit between the prospective adopting individual or individuals and the parent or guardian.
- The moral fitness between the prospective adopting individual or individuals and the parent or guardian.
- The mental and physical health between the prospective adopting individual or individuals and the parent or guardian.
- The home, school, and community record of the child.
- The child's reasonable preference, if the child is 14 years old or younger, and if the court considers the child to be of sufficient age to express a preference.
- The ability and willingness of the prospective adopting individual or individuals to adopt the child's siblings.

- Any other factor considered by the court to be relevant to a particular prospective adoptive placement or to a revocation of an out-of-court release or consent.

Temporary Placement

When an adoption petition is filed, the Code requires the court to direct a full investigation that considers the adoptee's best interests and family background, and the reasons for his or her placement away from his or her parent or parents. A written report must be filed within three months after the order for investigation. Within 14 days after receiving the report, the judge must examine it and enter an order terminating the rights of the child's parent or parents, if there was a parental consent, or the rights of any person in loco parentis, if there was a consent by someone other than the parents, and approve placement of the child with the petitioner if the judge is satisfied as to the genuineness of consent to the adoption and the legal authority of the person or people signing the consent, and that the adoption will serve the adoptee's best interests.

In a direct placement, a parent or guardian with legal and physical custody of a child may make a temporary placement of the child. In an agency placement, a child placing agency with written authorization from the parent or guardian may make a temporary placement.

("Agency placement" means a placement in which a child placing agency, the DHS, or a court selects the adoptive parent and transfers physical custody of the child to the prospective adoptive parent. "Temporary placement" means a placement that occurs before court approval and that meets requirements prescribed in the Code.)

A parent or guardian who wishes to regain custody of a child who has been placed temporarily must file a petition requesting that the temporary placement be revoked and that the child be returned to him or her. Under the bill, if an out-of-court release or out-of-court consent had been signed, a petition to revoke a temporary placement would have to be filed with the court within five days, excluding weekends and holidays, after the release or consent was executed.

MCL 710.23d et al.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would have an indeterminate impact on caseload and administrative costs for local courts. There are two offsetting factors, meaning that the direction of the impact is ambiguous at this time. The bill would provide a time period of up to five days within which a parent could attempt to revoke an out-of-court release, and after that point the release would become irrevocable. The bill also would define the parameters of a hearing in the event that a parent submitted paperwork to revoke the release within the specified time period. These parameters include whether the release was given voluntarily and what would be in the best interests of the child. The creation of these time frames and parameters could result in more hearings and thereby increase caseload for family courts. However, the same parameters also could help improve the efficiency of the court in addressing the existing caseload, and the five-day time period could reduce the caseload by preventing revocations that otherwise might occur after the time period.

Fiscal Analyst: Dan O'Connor

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.